

17-33-1. Title -- Establishment of merit system -- Separate systems for peace officers and firemen recognized -- Options of small counties.

(1) This chapter shall be known and may be cited as the "County Personnel Management Act."

(2) A merit system of personnel administration for the counties of the state of Utah, their departments, offices, and agencies, except as otherwise specifically provided, is established.

(3) This chapter recognizes the existence of the merit systems for peace officers of the several counties as provided for in Chapter 30, Deputy Sheriffs - Merit System, and Chapter 30a, Peace Officer Merit System in Counties of the First Class Act, and for firemen of the several counties as provided for in Chapter 28, Firemen's Civil Service Commission, and is intended to give county commissions the option of using the provisions of this chapter as a single merit system for all county employees or in combination with these existing systems for firemen and peace officers.

(4) On or after May 6, 2002, any county that has fewer than 200 employees not covered by other merit systems or not exempt under Subsections 17-33-8(1)(b)(i) through (vii) may, at its option, comply with the provisions of this chapter.

(5) Notwithstanding the provisions of Subsection (4), any county which was in compliance with the provisions of this chapter prior to May 6, 2002, shall continue to comply with the provisions of this chapter even though the county may not thereafter meet or exceed the threshold requirements of Subsection (4).

Amended by Chapter 366, 2014 General Session

17-33-2. Definitions.

As used in this chapter:

(1) "Career service position" means any position in the county service except those exempted under Section 17-33-8.

(2) "Council" means the career service council, a three-member appeals and personnel advisory board.

(3) "Director" means the director of personnel management.

(4) "Eligible applicant" means any applicant that meets the job related minimum requirements established for a position in the career service.

(5) "Eligible list" means a list of eligible applicants ranked in order of relative knowledge, skill, ability and merit.

(6) "Exempt positions" means those positions which are not in the career service as specified in Section 17-33-8.

(7) "Merit system" means a system of personnel administration based on the principles set forth in Section 17-33-3.

(8) "Position classification" means a grouping of positions under the same title which are sufficiently similar to be compensated at the same salary range and to which the same tests of ability can be applied.

(9) "Provisional appointment" means an appointment to fill a position pending the establishment of a register for such position.

Amended by Chapter 182, 1999 General Session

17-33-3. Merit principles.

It is the policy of this state that each county may establish a personnel system administered in a manner that will provide for the effective implementation of the following merit principles:

- (1) recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment;
- (2) provision of equitable and adequate compensation;
- (3) training of employees as needed to assure high-quality performance;
- (4) retention of employees on the basis of the adequacy of their performance, and separation of employees whose inadequate performance cannot be corrected;
- (5) fair treatment of applicants and employees in all aspects of personnel administration without regard to race, color, religion, sex, national origin, political affiliation, age, or disability, and with proper regard for their privacy and constitutional rights as citizens;
- (6) provision of information to employees regarding their political rights and prohibited practices under the Hatch Act; and
- (7) provision of a formal procedure for processing the appeals and grievances of employees without discrimination, coercion, restraint, or reprisal.

Amended by Chapter 73, 2001 General Session

17-33-4. Career service council -- Members and alternate members -- Powers and duties -- Appeals -- Time limit -- Qualifications, appointment, terms, and compensation of council members.

(1) (a) (i) There shall be in each county establishing a system a three-member bipartisan career service council appointed by the county executive. The members of the council shall be persons in sympathy with the application of merit principles to public employment.

(ii) (A) The county executive may appoint alternate members of the career service council to hear appeals that one or more regular career service council members are unable to hear.

(B) The term of an alternate member of the career service council may not exceed one year.

(b) The council shall hear appeals not resolved at lower levels in the cases of career service employees suspended, transferred, demoted, or dismissed as well in the cases of other grievances not resolved by the grievance procedure at the division or departmental level.

(c) The career service council:

(i) may make an initial determination in each appeal whether the appeal is one of the types of matters under Subsection (1)(b) over which the council has jurisdiction;

(ii) shall review written appeals in cases of applicants rejected for examination and report final binding appeals decisions, in writing, to the county legislative body;

(iii) may not hear any other personnel matter; and

(iv) may affirm, modify, vacate, or set aside an order for disciplinary action.

(d) (i) A person adversely affected by a decision of the career service council

may appeal the decision to the district court.

(ii) An appeal to the district court under this Subsection (1)(d) is barred unless it is filed within 30 days after the career service council issues its decision.

(iii) If there is a record of the career service council proceedings, the district court review shall be limited to the record provided by the career service council.

(iv) In reviewing a decision of the career service council, the district court shall presume that the decision is valid and may determine only whether the decision is arbitrary or capricious.

(2) Each council member shall serve a term of three years to expire on June 30, three years after the date of his or her appointment, except that original appointees shall be chosen as follows: one member for a term expiring June 30, 1982; one member for a term expiring June 30, 1983; and one member for a term expiring June 30, 1984. Successors of original council members shall be chosen for three-year terms. An appointment to fill a vacancy on the council shall be for only the unexpired term of the appointee's successor. Each member of the board shall hold office until his successor is appointed and confirmed. A member of the council may be removed by the county executive for cause, after having been given a copy of the charges against him or her and an opportunity to be heard publicly on the charges before the county legislative body. Adequate annual appropriations shall be made available to enable the council effectively to carry out its duties under this law.

(3) Members and alternates of the council shall be United States citizens and be actual and bona fide residents of the state of Utah and the county from which appointed for a period of not less than one year preceding the date of appointment and a member may not hold another government office or be employed by the county.

(4) The council shall elect one of its members as chairperson, and two or more members of the council shall constitute a quorum necessary for carrying on the business and activity of the council.

(5) The council shall have subpoena power to compel attendance of witnesses, and to authorize witness fees where it deems appropriate, to be paid at the same rate as in justice courts.

(6) (a) (i) Council members shall receive compensation for each day or partial day they are in session at a per diem rate determined by the county legislative body.

(ii) An alternate member shall receive compensation for each day or partial day that the alternate member is required to replace a regular council member, at a per diem rate determined by the county legislative body.

(b) The county legislative body may periodically adjust the compensation rate for inflation.

Amended by Chapter 241, 2001 General Session

17-33-4.5. Council may refer an appeal to an administrative law judge for a recommendation -- Council action on recommendation.

(1) (a) A county legislative body may appoint one or more administrative law judges to hear appeals referred by a career service council under this section.

(b) Each administrative law judge shall be trained and experienced in personnel matters.

(2) (a) If a career service council determines that it is in the county's best interest, it may initially refer an appeal to an administrative law judge who has been appointed under Subsection (1).

(b) After holding a hearing, the administrative law judge shall make findings of fact and a recommendation to the career service council.

(c) After receiving the administrative law judge's recommendation, a career service council may request the administrative law judge to hold a further factual hearing before the career service council's decision.

(d) A career service council may adopt or reject an administrative law judge's recommendation, whether before or after a further hearing under Subsection (2)(c).

Enacted by Chapter 241, 2001 General Session

17-33-5. Office of personnel management -- Director -- Appointment and responsibilities -- Personnel rules.

(1) (a) (i) Each county executive shall:

(A) create an office of personnel management, administered by a director of personnel management; and

(B) ensure that the director is a person with proven experience in personnel management.

(ii) Except as provided in Subsection (1)(b), the position of director of personnel management shall be:

(A) a merit position; and

(B) filled as provided in Subsection (1)(a)(iii).

(iii) Except as provided in Subsection (1)(b), the career service council shall:

(A) advertise and recruit for the director position in the same manner as for merit positions;

(B) select three names from a register; and

(C) submit those names as recommendations to the county legislative body.

(iv) Except as provided in Subsection (1)(b), the county legislative body shall select a person to serve as director of the office of personnel management from the names submitted to it by the career service council.

(b) (i) Effective for appointments made after May 1, 2006, and as an alternative to the procedure under Subsections (1)(a)(ii), (iii), and (iv) and at the county executive's discretion, the county executive may appoint a director of personnel management with the advice and consent of the county legislative body.

(ii) The position of each director of personnel management appointed under this Subsection (1)(b) shall be a merit exempt position.

(iii) A director of personnel management appointed under this Subsection (1)(b) may be terminated by the county executive with the consent of the county legislative body.

(2) The director of personnel management shall:

(a) encourage and exercise leadership in the development of expertise in personnel administration within the several departments, offices, and agencies in the county service and make available the facilities of the office of personnel management to this end;

(b) advise the county legislative and executive bodies on the use of human resources;

(c) develop and implement programs for the improvement of employee effectiveness, such as training, safety, health, counseling, and welfare;

(d) investigate periodically the operation and effect of this law and of the policies made under it and report findings and recommendations to the county legislative body;

(e) establish and maintain records of all employees in the county service, setting forth as to each employee class, title, pay or status, and other relevant data;

(f) make an annual report to the county legislative body and county executive regarding the work of the department; and

(g) apply and carry out this law and the policies under it and perform any other lawful acts that are necessary to carry out the provisions of this law.

(3) (a) (i) The director shall recommend personnel rules for the county.

(ii) The county legislative body may:

(A) recommend personnel rules for the county; and

(B) approve, amend, or reject personnel rules before they are adopted.

(b) The rules shall provide for:

(i) recruiting efforts to be planned and carried out in a manner that assures open competition, with special emphasis to be placed on recruiting efforts to attract minorities, women, persons with a disability as defined by and covered under the Americans with Disabilities Act of 1990, 42 U.S.C. 12102, or other groups that are substantially underrepresented in the county work force to help assure they will be among the candidates from whom appointments are made;

(ii) the establishment of job related minimum requirements wherever practical, that all successful candidates shall be required to meet in order to be eligible for consideration for appointment or promotion;

(iii) selection procedures that include consideration of the relative merit of each applicant for employment, a job related method of determining the eligibility or ineligibility of each applicant, and a valid, reliable, and objective system of ranking eligible applicants according to their qualifications and merit;

(iv) certification procedures that insure equitable consideration of an appropriate number of the most qualified eligible applicants based on the ranking system;

(v) appointments to positions in the career service by selection from the most qualified eligible applicants certified on eligible lists established in accordance with Subsections (3)(b)(iii) and (iv);

(vi) noncompetitive appointments in the occasional instance where there is evidence that open or limited competition is not practical, such as for unskilled positions that have no minimum job requirements;

(vii) limitation of competitions at the discretion of the director for appropriate positions to facilitate employment of qualified applicants with a substantial physical or mental impairment, or other groups protected by Title VII of the Civil Rights Act;

(viii) permanent appointment for entry to the career service that shall be contingent upon satisfactory performance by the employee during a period of six months, with the probationary period extendable for a period not to exceed six months for good cause, but with the condition that the probationary employee may appeal directly to the council any undue prolongation of the period designed to thwart merit

principles;

(ix) temporary, provisional, or other noncareer service appointments, which may not be used as a way of defeating the purpose of the career service and may not exceed 270 days;

(x) lists of eligible applicants normally to be used, if available, for filling temporary positions, and short term emergency appointments to be made without regard to the other provisions of law to provide for maintenance of essential services in an emergency situation where normal procedures are not practical, these emergency appointments not to exceed 270 days;

(xi) promotion and career ladder advancement of employees to higher level positions and assurance that all persons promoted are qualified for the position;

(xii) recognition of the equivalency of other merit processes by waiving, at the discretion of the director, the open competitive examination for placement in the career service positions of those who were originally selected through a competitive examination process in another governmental entity, the individual in those cases, to serve a probationary period;

(xiii) preparation, maintenance, and revision of a position classification plan for all positions in the career service, based upon similarity of duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for, and the same schedule of pay may be equitably applied to, all positions in the same class, the compensation plan, in order to maintain a high quality public work force, to take into account the responsibility and difficulty of the work, the comparative pay and benefits needed to compete in the labor market and to stay in proper alignment with other similar governmental units, and other factors;

(xiv) keeping records of performance on all employees in the career service and requiring consideration of performance records in determining salary increases, any benefits for meritorious service, promotions, the order of layoffs and reinstatements, demotions, discharges, and transfers;

(xv) establishment of a plan governing layoffs resulting from lack of funds or work, abolition of positions, or material changes in duties or organization, and governing reemployment of persons so laid off, taking into account with regard to layoffs and reemployment the relative ability, seniority, and merit of each employee;

(xvi) establishment of a plan for resolving employee grievances and complaints with final and binding decisions;

(xvii) establishment of disciplinary measures such as suspension, demotion in rank or grade, or discharge, measures to provide for presentation of charges, hearing rights, and appeals for all permanent employees in the career service to the career service council;

(xviii) establishment of a procedure for employee development and improvement of poor performance;

(xix) establishment of hours of work, holidays, and attendance requirements in various classes of positions in the career service;

(xx) establishment and publicizing of fringe benefits such as insurance, retirement, and leave programs; and

(xxi) any other requirements not inconsistent with this law that are proper for its enforcement.

Amended by Chapter 128, 2009 General Session

17-33-6. Certification of eligibility by director -- Power of director to examine payrolls.

No new employee shall be hired in a position covered by this chapter, and no employee shall be changed in pay, title, or status, nor shall any employee be paid, unless certified by the director as eligible under the provisions of, or regulations promulgated under, this chapter. The director of personnel management may examine payrolls at any time to determine conformity with this chapter and the county rules.

Enacted by Chapter 81, 1981 General Session

17-33-7. Functions of county office of personnel management -- Personnel functions of county agencies, departments, or offices.

(1) (a) The county office of personnel management shall perform the functions required by this Subsection (1).

(b) The county executive, county legislative body, and county office of personnel management may not delegate those functions to a separate county agency, office, or department.

(c) The county office of personnel management shall:

(i) design and administer a county pay plan that includes salaries, wages, incentives, bonuses, leave, insurance, retirement, and other benefits;

(ii) design and administer the county classification plan and grade allocation system, including final decisions on position classification and grade allocation;

(iii) conduct position classification studies, including periodic desk audits, except that an agency, department, or office may submit classification recommendations to the county office of personnel management;

(iv) maintain registers of publicly recruited applicants and certification of top-ranking eligible applicants;

(v) monitor county agency, department, or office personnel practices to determine compliance with equal opportunity and affirmative action guidelines; and

(vi) maintain central personnel records.

(d) The county legislative body may approve, amend, or reject the pay plan.

(2) County agencies, departments, or offices shall:

(a) establish initial job descriptions;

(b) recommend position classifications and grade allocations;

(c) make final selections for appointments and promotions to vacant positions;

(d) conduct performance evaluations;

(e) discipline employees; and

(f) perform other functions approved by the county executive, and agreed to by the county agency, office, or department.

Amended by Chapter 241, 2001 General Session

17-33-8. Career service -- Exempt positions.

- (1) The career service:
 - (a) is a permanent service to which this chapter applies; and
 - (b) comprises all tenured county positions in the public service, except:
 - (i) subject to Subsection (2):
 - (A) the county executive, members of the county legislative body, and other elected officials; and
 - (B) each major department head charged directly by the county legislative body, or by a board appointed by the county legislative body, with the responsibility of assisting to formulate and carry out policy matters;
 - (ii) one confidential secretary for each elected county officer and major department head, if a confidential secretary is assigned;
 - (iii) an administrative assistant to the county executive, each member of the county legislative body, and each elected official, if an administrative assistant is assigned;
 - (iv) each duly appointed chief deputy of any elected county officer who takes over and discharges the duties of the elected county officer in the absence or disability of the elected county officer;
 - (v) subject to Subsection (3), a person who is:
 - (A) appointed by an elected county officer to be a division director, to administer division functions in furtherance of the performance of the elected officer's professional duties;
 - (B) in a confidential relationship with the elected county officer; and
 - (C) not in a law enforcement rank position of captain or below;
 - (vi) each person employed to make or conduct a temporary and special inquiry, investigation, or examination on behalf of the county legislative body or one of its committees;
 - (vii) each noncareer employee:
 - (A) compensated for the employee's services on a seasonal or contractual basis; and
 - (B) hired on emergency or seasonal appointment basis, as approved by the council; and
 - (viii) each provisional employee, as defined by the county's policies and procedures or its rules and regulations;
 - (ix) each part-time employee, as defined by the county's policies and procedures or its rules and regulations;
 - (x) each employee appointed to perform:
 - (A) work that does not exceed three years in duration; or
 - (B) work with limited funding; and
 - (xi) each position that, by its confidential or key policy-determining nature, cannot or should not be appropriately included in the career service.
 - (2) Before a position under Subsection (1)(b)(i) may be changed from its current status to exempt or tenured, the career service council shall, after giving due notice, hold a public hearing on the proposed change of status.
 - (3) (a) Subsection (1)(b)(v) may not be construed to cause a person serving as a nonexempt employee on May 5, 2008 in a position described in that subsection to lose the nonexempt status.

(b) The elected county officer in a supervisory position over an employee described in Subsection (3)(a) shall work with the county's office of personnel management to develop financial and other incentives to encourage a nonexempt employee to convert voluntarily to exempt status.

(4) (a) Rules and regulations promulgated under this chapter shall list by job title and department, office or agency, each position designated as exempt under Subsection (1)(b)(xi).

(b) A change in exempt status of a position designated as being exempt under Subsection (1)(b)(xi) constitutes an amendment to the rules and regulations promulgated under this chapter.

Amended by Chapter 25, 2008 General Session

Amended by Chapter 172, 2008 General Session

17-33-9. Acceptance of exempt position by career service employee -- Reappointment register.

(1) Any career service employee accepting an appointment to an exempt position who is not retained by the appointing officer, unless discharged for cause as provided by this act or by regulation, shall:

(a) be appointed to any career service position for which the employee qualifies in a pay grade comparable to the employee's last position in the career service provided an opening exists; or

(b) be appointed to any lesser career service position for which the employee qualifies pending the opening of a position described in Subsection (1) of this section.

(2) The director shall maintain a reappointment register to facilitate the operation of this section, which shall have precedence over other registers.

Enacted by Chapter 81, 1981 General Session

17-33-10. Grievance and appeals procedure -- Employees' complaints of discriminatory employment practice.

(1) Any county to which the provisions of this act apply shall establish in its personnel rules and regulations a grievance and appeals procedure. The procedure shall be used to resolve disputes arising from grievances as defined in the rules and regulations, including acts of discrimination. The procedure may also be used by employees in the event of dismissal, demotion, suspension, or transfer.

(2) Any charge by a county career service employee of discriminatory or prohibited employment practice as prohibited by Section 34A-5-106, can be filed with the Division of Antidiscrimination and Labor within the Labor Commission. Complaints shall be filed within 30 days of the issuance of a written decision of the county career service council.

Amended by Chapter 297, 2011 General Session

17-33-11. Political activities of employees.

Except as otherwise provided by law or by rules and regulations promulgated

under this chapter for federally aided programs, county employees may voluntarily participate in political activity subject to the following provisions:

(1) No person shall be denied the opportunity to become an applicant for a position under the merit system in any covered department by virtue of political opinion or affiliation.

(2) No person employed by the county under the merit system may be dismissed from service as a result of political opinion or affiliation.

(3) A county career service employee may voluntarily contribute funds to political groups and become a candidate for public office.

(4) No county officer or employee, whether elected or appointed, may directly or indirectly coerce, command, or advise any officer or employee covered under the merit system to pay, lend, or contribute part of his or her salary or compensation or anything else of value to any party, committee, organization, agency, or person for political purposes. No county officer or employee, whether elected or appointed, may attempt to make any officer's or employee's personnel status dependent upon the employee's support or lack of support for any political party, committee, organization, agency, or person engaged in a political activity.

(5) No officer or employee may engage in any political activity during the hours of employment nor shall any person solicit political contributions from county employees during hours of employment for political purposes, but nothing in this section shall preclude voluntary contribution by a county employee to the party or candidate of the employee's choice.

(6) Nothing contained in this chapter shall be construed to permit partisan political activity of any county employee who is prevented or restricted from engaging in such political activity by the provision of the federal Hatch Act.

Amended by Chapter 65, 1983 General Session

17-33-11.5. Compliance with Labor Code requirements.

Each county shall comply with the requirements of Section 34-32-1.1.

Enacted by Chapter 284, 2003 General Session

17-33-12. Reciprocal agreements for benefit of system -- Cooperation by director with other governmental agencies.

(1) The county may enter into reciprocal agreements, upon such terms as may be agreed upon, for the use of equipment, materials, facilities, and services with any public agency or body for purposes deemed of benefit to the public personnel system.

(2) The director may cooperate with other governmental agencies charged with public personnel administration in conducting personnel tests, recruiting personnel, training personnel, establishing lists from which eligibles shall be certified for appointment and for the interchange of personnel and their benefits.

Enacted by Chapter 81, 1981 General Session

17-33-13. Prohibited actions.

(1) It is an offense for a person to make any false statement, certificate, mark, rating, or report with regard to any test, certification, or appointment made under any provision of this law or in any manner commit or attempt to commit any fraud preventing the impartial execution of this chapter.

(2) It is an offense for a person, under circumstances not amounting to a violation of Section 76-8-103 or 76-8-105, to directly or indirectly, give, render, pay, offer, solicit, or accept any money, service, or other valuable consideration for any appointment, proposed appointment, promotion, or proposed promotion to, or for any advantage in, a position in the career service.

(3) It is an offense for any employee of the personnel department, examiner, or other person to:

(a) defeat, deceive, or obstruct any person in his or her right to examination, eligibility, certification, or appointment under this chapter; or

(b) furnish to any person any special or secret information for the purpose of affecting the rights or prospects of any person with respect to employment in the career service.

Amended by Chapter 92, 1998 General Session

17-33-14. Violations -- Misdemeanor -- Ineligibility for employment and forfeiture of position.

(1) Any person who willfully violates any provision of this chapter or the rules and regulations promulgated under it is guilty of a class A misdemeanor.

(2) Any person who has been adjudged guilty of violating any of the provisions of this chapter or the rules and regulations promulgated under it shall, for a period of five years, in addition to the sanctions of Subsection (1), be ineligible for appointment to or employment in a position in the county service, and if an officer or employee of the county, shall forfeit that office or position.

Amended by Chapter 241, 1991 General Session

17-33-15. Duty of county legislative body to provide rules or regulations -- Conflicts with state or federal law.

(1) It shall be the duty of the county legislative body to provide by rule or regulation for the operation and functioning of any activity within the purpose and spirit of the act which is necessary and expedient.

(2) If any provision of this act or the application thereof is found to be in conflict with any state or federal law, conflict with which would impair funding otherwise receivable from the state or federal government, the conflicting part is hereby declared to be inoperative solely to the extent of the conflict and with respect to the department, agency, or institution of the county directly affected, but such finding does not affect the operation of the remainder of this act in any of its applications.

(3) Notwithstanding any provision to the contrary, no rule or regulation shall be adopted by the county legislative body which would deprive the county or any of its departments, agencies, or institutions of state or federal grants or other forms of financial assistance.

Amended by Chapter 297, 2011 General Session

17-33-16. Appointment of more than one chief deputy or undersheriff.

A sheriff in a county employing more than 100 full-time uniformed peace officers may, with the consent of the council and the county legislative body, appoint more than one chief deputy or undersheriff.

Enacted by Chapter 172, 2008 General Session